

Internal Revenue Service

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LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Sub 9 =

Business A =

Business B =

State A =

State B =

X =

Dear :

This letter responds to your October 9, 2008, request for rulings on certain federal income tax consequences of a series of proposed transactions. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distributions (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are being used principally as a device for the distribution of the earnings and profits of a distributing corporation or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly

stock representing a 50-percent or greater interest in a distributing corporation or controlled corporation (see § 355(e) and § 1.355-7).

SUMMARY OF FACTS

Parent is a publicly traded, domestic corporation and the common parent of an affiliated group of corporations (the “Parent Group”) that files a consolidated federal income tax return. Parent owns all of the outstanding stock of Sub 1 and Sub 2.

Sub 1 owns all of the outstanding stock of Sub 3. Sub 3 owns all of the outstanding stock of Sub 4. Sub 4 owns all of the outstanding stock of Sub 5.

Sub 2 owns all of the outstanding stock of Sub 6. Sub 6 owns all of the outstanding stock of Sub 7. Sub 7 owns all of the outstanding stock of Sub 8 and Sub 9. Each of the above entities is a domestic corporation and a member of the Parent Group.

Sub 7 is directly engaged in each of Business A and Business B. The financial information submitted by Parent indicates that Business A and Business B each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The management of the Parent Group has determined that it can increase efficiency and achieve material savings by consolidating Business A and the businesses of Sub 8 and Sub 9 with the business of Sub 5.

PROPOSED TRANSACTIONS

For what are represented to be valid business reasons, Parent has proposed the following transactions (the “Proposed Transactions”):

- (i) Sub 1 will form a new State A limited liability company that will be disregarded as an entity separate from Sub 1 for U.S. federal tax purposes (“New LLC”).
- (ii) Sub 8 will merge with and into Sub 9 under State B law, with Sub 9 surviving (“Merger 1”). No stock of Sub 9 actually will be issued in Merger 1.
- (iii) Sub 7 will contribute Business A to Sub 9, transferring personnel who accept reassignment (estimated to be approximately x people) and various assets of Business A, including inventory, automobiles, furniture, equipment, files, and customer records and other intangibles (the “Initial Contribution”).
- (iv) Sub 7 will distribute all of its stock in Sub 9 to Sub 6 (“Distribution 1”).

- (v) Sub 6 will distribute all of its stock in Sub 9 to Sub 2 (“Distribution 2”).
- (vi) Sub 2 will distribute all of its stock in Sub 9 to Parent (“Distribution 3,” and together with Distribution 1 and Distribution 2, the “Distributions”).
- (vii) Sub 9 will merge with and into New LLC under State A and State B law, with New LLC surviving (“Merger 2”). No stock in Sub 1 or interests in New LLC actually will be issued in Merger 2.
- (viii) Pursuant to an agreement by and among Sub 1, Sub 3, Sub 4, Sub 5, and New LLC (the “Agreement”), Sub 1 will agree to contribute all of the interests in New LLC to Sub 3 (“Contribution 1”), Sub 3 will agree to contribute all of the interests in New LLC to Sub 4 (“Contribution 2”), Sub 4 will agree to contribute all of the interests in New LLC to Sub 5 (“Contribution 3,” and together with Contribution 1 and Contribution 2, the “Contributions”), and New LLC will agree to merge with and into Sub 5, with Sub 5 surviving. Under the Agreement, the parties also will provide (i) Sub 3 with the right to cause the New LLC interests to be transferred directly to Sub 4, (ii) Sub 4 with the right to cause the New LLC interests to be transferred directly to Sub 5, and (iii) Sub 5 with the right to cause the assets and liabilities of New LLC to be transferred directly to Sub 5 via statutory merger under State A law of New LLC into Sub 5, with Sub 5 surviving. In lieu of taking actual receipt of the New LLC interests pursuant to Contribution 1, Contribution 2, and Contribution 3, Sub 3, Sub 4, and Sub 5, respectively, will exercise their rights under the Agreement. As a result, under State A law, New LLC will merge with and into Sub 5, with Sub 5 surviving (“Merger 3”). No stock in Sub 3, Sub 4, or Sub 5 actually will be issued in connection with Merger 3.

REPRESENTATIONS

Merger 1

Taxpayer makes the following representations with respect to Merger 1, described above in step (ii):

- (1a) Merger 1 will be effected pursuant to State B law. As a result of the operation of such law, all of the assets and liabilities of Sub 8 will become the assets and liabilities of Sub 9.
- (1b) The fair market value of the Sub 9 stock constructively received by Sub 7 in Merger 1 will be approximately equal to the fair market value of the Sub 8 stock surrendered in the exchange.

- (1c) At least 40 percent of the proprietary interest in Sub 8 will be exchanged constructively for Sub 9 stock and will be preserved (within the meaning of § 1.368-1(e)).
- (1d) Except as described herein, neither Sub 9 nor any person related (within the meaning of § 1.368-1(e)(4)) to Sub 9 has any plan or intention to redeem or otherwise acquire any shares of the Sub 9 stock constructively issued in Merger 1 at any time after or in connection with Merger 1 or has any plan or intention to cause any other person or entity to acquire any such stock.
- (1e) Except as described herein, Sub 9 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 8 acquired in Merger 1, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- (1f) The liabilities of Sub 8 assumed (within the meaning of § 357(d)) by Sub 9 will have been incurred by Sub 8 in the ordinary course of business and will be associated with the assets being transferred.
- (1g) Following the Proposed Transactions, Sub 5 will continue the historic business of Sub 8 or use a significant portion of Sub 8's historic business assets in a business.
- (1h) Except for expenses that are "solely and directly related" (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Proposed Transactions, all of which will be paid by Sub 5, each party will pay its respective expenses, if any, incurred in connection with the Proposed Transactions.
- (1i) At the time of Merger 1, there will be no intercorporate indebtedness existing between Sub 9 and Sub 8 that was issued, acquired, or will be settled at a discount.
- (1j) No two parties to Merger 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (1k) Sub 8 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).

- (1l) The total fair market value of the assets transferred to Sub 9 by Sub 8 will exceed the sum of: (i) the amount of liabilities assumed (as determined under § 357(d)) by Sub 9 in connection with Merger 1; (ii) the amount of liabilities owed to Sub 9 by Sub 8 that are discharged or extinguished in connection with Merger 1; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Sub 8 in connection with Merger 1. The fair market value of the assets of Sub 9 will exceed the amount of its liabilities immediately after Merger 1.

Initial Contribution and Distribution 1

Taxpayer makes the following representations with respect to the Initial Contribution and Distribution 1, described above in steps (iii) and (iv):

- (2a) No part of the consideration to be distributed by Sub 7 will be received by a shareholder as a creditor, an employee, or in any capacity other than that of a shareholder of Sub 7.
- (2b) The five years of financial information submitted on behalf of Business B conducted by the Sub 7 separate affiliated group ("SAG" as defined in § 355(b)(3)(B)) is representative of the present business operations of Business B conducted by the Sub 7 SAG, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (2c) The five years of financial information submitted on behalf of Business A conducted by the Sub 7 SAG is representative of the present business operations of Business A conducted by the Sub 7 SAG (and to be conducted by the Sub 5 SAG), and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (2d) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, the Sub 7 SAG has been the principal owner of the goodwill and significant assets of Business B and will continue to be such owner following the Proposed Transactions.

- (2e) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 1 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 1, the Sub 7 SAG has been the principal owner of the goodwill and significant assets of Business A. The Sub 5 SAG will be the principal owner of the goodwill and significant assets of Business A following the Proposed Transactions.
- (2f) Following the Proposed Transactions, the Sub 7 SAG will continue the active conduct of Business B, independently and with its separate employees.
- (2g) Following the Proposed Transactions, the Sub 5 SAG will continue the active conduct of Business A, independently and with its separate employees.
- (2h) Distribution 1 is being carried out for the following corporate business purposes: to increase efficiency and achieve savings by consolidating the businesses of Sub 9, Sub 8, and Sub 5 and to avoid an unnecessary, material increase in state taxes. Distribution 1 is motivated, in whole or substantial part, by one or more of these corporate business purposes. These corporate business purposes cannot be achieved through a nontaxable transaction that would not involve the distribution of Sub 9 and that would be neither impractical nor unduly expensive.
- (2i) Distribution 1 is not being used principally as a device for the distribution of the earnings and profits of Sub 7 or Sub 9 or both.
- (2j) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 7 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 7 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.

- (2k) For purposes of § 355(d), immediately after Distribution 1, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 9 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 9 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1 or (ii) attributable to distributions on Sub 7 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 1.
- (2l) The total adjusted basis of the assets transferred to Sub 9 by Sub 7 in the Initial Contribution will equal or exceed the sum of any liabilities assumed (within the meaning of § 357(d)) by Sub 9.
- (2m) Any liabilities assumed (within the meaning of § 357(d)) by Sub 9 in the Initial Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.
- (2n) The total fair market value of the assets transferred to Sub 9 in the Initial Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Sub 9 in the exchange, (ii) the amount of any liabilities owed to Sub 9 by Sub 7 that are discharged or extinguished in connection with the exchange, and (iii) the amount of cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Sub 7 in the exchange. The fair market value of the assets of Sub 9 will exceed the amount of Sub 9's liabilities immediately after the Initial Contribution.
- (2o) Sub 7 will neither accumulate its receivables nor make extraordinary payment of its payables in anticipation of the Initial Contribution and Distribution 1.
- (2p) No intercorporate debt will exist between Sub 7 and Sub 9 at the time of, or after, Distribution 1, other than indebtedness, if any, incurred in the ordinary course of business.
- (2q) Immediately before Distribution 1, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).

- (2r) At the time of Distribution 1, no member of the Parent Group will have an excess loss account in the Sub 9 stock or in the stock of any Sub 9 subsidiary.
- (2s) Payments made in connection with all continuing transactions, if any, between Sub 7 and Sub 9 or Sub 5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (2t) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (2u) Distribution 1 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Sub 7 or Sub 9 (including any predecessor or successor of Sub 7 or Sub 9).
- (2v) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Sub 7 or Sub 9, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Sub 7 nor Sub 9 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Distribution 2

Taxpayer makes the following representations with respect to Distribution 2, described above in step (v):

- (3a) No part of the consideration to be distributed by Sub 6 will be received by a shareholder as a creditor, an employee, or in any capacity other than that of a shareholder of Sub 6.
- (3b) Sub 7 is, and immediately after Distribution 2 will be, a member of Sub 6's SAG.
- (3c) The five years of financial information submitted on behalf of Business B conducted by the Sub 6 SAG is representative of the present business operations of Business B conducted by the Sub 6 SAG, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- (3d) The five years of financial information submitted on behalf of Business A conducted by the Sub 7 SAG is representative of the present business operations of Business A conducted by the Sub 7 SAG (and to be conducted by the Sub 5 SAG), and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (3e) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, the Sub 6 SAG has been the principal owner of the goodwill and significant assets of Business B and will continue to be such owner following the Proposed Transactions.
- (3f) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 2 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 2, the Sub 7 SAG has been the principal owner of the goodwill and significant assets of Business A. The Sub 5 SAG will be the principal owner of the goodwill and significant assets of Business A following the Proposed Transactions.
- (3g) Following the Proposed Transactions, the Sub 6 SAG will continue the active conduct of Business B, independently and with its separate employees.
- (3h) Following the Proposed Transactions, the Sub 5 SAG will continue the active conduct of Business A, independently and with its separate employees.
- (3i) Distribution 2 is being carried out for the following corporate business purposes: to increase efficiency and achieve savings by consolidating the businesses of Sub 9, Sub 8, and Sub 5 and to avoid an unnecessary, material increase in state taxes. Distribution 2 is motivated, in whole or substantial part, by one or more of these corporate business purposes. These corporate business purposes cannot be achieved through a nontaxable transaction that would not involve the distribution of Sub 9 and that would be neither impractical nor unduly expensive.
- (3j) Distribution 2 is not being used principally as a device for the distribution of the earnings and profits of Sub 6 or Sub 9 or both.

- (3k) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 6 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 6 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.
- (3l) For purposes of § 355(d), immediately after Distribution 2, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 9 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 9 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2 or (ii) attributable to distributions on Sub 6 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 2.
- (3m) No intercorporate debt will exist between Sub 6 and Sub 9 at the time of, or after, Distribution 2, other than indebtedness, if any, incurred in the ordinary course of business.
- (3n) Immediately before Distribution 2, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (3o) At the time of Distribution 2, no member of the Parent Group will have an excess loss account in the Sub 9 stock or in the stock of any Sub 9 subsidiary.
- (3p) Payments made in connection with all continuing transactions, if any, between Sub 6 and Sub 9 or Sub 5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (3q) Distribution 2 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Sub 6 or Sub 9 (including any predecessor or successor of Sub 6 or Sub 9).

- (3r) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Sub 6 or Sub 9, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Sub 6 nor Sub 9 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Distribution 3

Taxpayer makes the following representations with respect to Distribution 3, described above in step (vi):

- (4a) No part of the consideration to be distributed by Sub 2 will be received by a shareholder as a creditor, an employee, or in any capacity other than that of a shareholder of Sub 2.
- (4b) Sub 7 is, and immediately after Distribution 3 will be, a member of Sub 2's SAG.
- (4c) The five years of financial information submitted on behalf of Business B conducted by the Sub 2 SAG is representative of the present business operations of Business B conducted by the Sub 2 SAG, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4d) The five years of financial information submitted on behalf of Business A conducted by the Sub 7 SAG is representative of the present business operations of Business A conducted by the Sub 7 SAG (and to be conducted by the Sub 5 SAG), and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (4e) Neither Business B nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 3, the Sub 2 SAG has been the principal owner of the goodwill and significant assets of Business B and will continue to be such owner following the Proposed Transactions.

- (4f) Neither Business A nor control of an entity conducting this business was acquired during the five-year period ending on the date of Distribution 3 in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part. Throughout the five-year period ending on the date of Distribution 3, the Sub 7 SAG has been the principal owner of the goodwill and significant assets of Business A. The Sub 5 SAG will be the principal owner of the goodwill and significant assets of Business A following the Proposed Transactions.
- (4g) Following the Proposed Transactions, the Sub 2 SAG will continue the active conduct of Business B, independently and with its separate employees.
- (4h) Following the Proposed Transactions, the Sub 5 SAG will continue the active conduct of Business A, independently and with its separate employees.
- (4i) Distribution 3 is being carried out for the following corporate business purposes: to increase efficiency and achieve savings by consolidating the businesses of Sub 9, Sub 8, and Sub 5 and to avoid an unnecessary, material increase in state taxes. Distribution 3 is motivated, in whole or substantial part, by one or more of these corporate business purposes. These corporate business purposes cannot be achieved through a nontaxable transaction that would not involve the distribution of Sub 9 and that would be neither impractical nor unduly expensive.
- (4j) Distribution 3 is not being used principally as a device for the distribution of the earnings and profits of Sub 2 or Sub 9 or both.
- (4k) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3.

- (4l) For purposes of § 355(d), immediately after Distribution 3, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 9 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 9 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3 or (ii) attributable to distributions on Sub 2 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of Distribution 3.
- (4m) No intercorporate debt will exist between Sub 2 and Sub 9 at the time of, or after, Distribution 3, other than indebtedness, if any, incurred in the ordinary course of business.
- (4n) Immediately before Distribution 3, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see §§ 1.1502-13 and 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597).
- (4o) At the time of Distribution 3, no member of the Parent Group will have an excess loss account in the Sub 9 stock or in the stock of any Sub 9 subsidiary.
- (4p) Payments made in connection with all continuing transactions, if any, between Sub 2 and Sub 9 or Sub 5 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.
- (4q) Distribution 3 is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Sub 2 or Sub 9 (including any predecessor or successor of Sub 2 or Sub 9).
- (4r) Immediately after the transaction (as defined in § 355(g)(4)), either (i) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Sub 2 or Sub 9, (ii) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (iii) neither Sub 2 nor Sub 9 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Merger 2

Taxpayer makes the following representations with respect to Merger 2, described above in step (vii):

- (5a) Merger 2 will be effected pursuant to the laws of State A and State B. As a result of the operation of such laws, all of the assets and liabilities of Sub 9 will become the assets and liabilities of Sub 1.
- (5b) The fair market value of the Sub 1 stock constructively received by Parent in Merger 2 will be approximately equal to the fair market value of the Sub 9 stock surrendered in the exchange.
- (5c) At least 40 percent of the proprietary interest in Sub 9 will be exchanged constructively for Sub 1 stock and will have been preserved (within the meaning of § 1.368-1(e)).
- (5d) Neither Sub 1 nor any person related (within the meaning of § 1.368-1(e)(4)) to Sub 1 has any plan or intention to redeem or otherwise acquire any shares of the Sub 1 stock constructively issued in Merger 2 at any time after or in connection with Merger 2 or has any plan or intention to cause any other person or entity to acquire any such stock.
- (5e) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 9 acquired in Merger 2, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C) or § 1.368-2(k).
- (5f) The liabilities of Sub 9 assumed (within the meaning of § 357(d)) by Sub 1 will have been incurred by Sub 9 in the ordinary course of business and will be associated with the assets being transferred.
- (5g) Following the Proposed Transactions, Sub 5 will continue the historic business of Sub 9 (including Business A) or use a significant portion of Sub 9's historic business assets in a business.
- (5h) Except for expenses that are "solely and directly related" (within the meaning of Rev. Rul. 73-54, 1973-1 C.B. 187) to the Proposed Transactions, all of which will be paid by Sub 5, each party will pay its respective expenses, if any, incurred in connection with the Proposed Transactions.

- (5i) At the time of Merger 2, there will be no intercorporate indebtedness existing between Sub 1 and Sub 9 that was issued, acquired, or will be settled at a discount.
- (5j) No two parties to Merger 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- (5k) Sub 9 is not under the jurisdiction of a court in a title 11 or similar case within the meaning of § 368(a)(3)(A).
- (5l) The total fair market value of the assets transferred to Sub 1 by Sub 9 will exceed the sum of: (i) the amount of liabilities assumed (as determined under § 357(d)) by Sub 1 in connection with Merger 2; (ii) the amount of liabilities owed to Sub 1 by Sub 9 that are discharged or extinguished in connection with Merger 2; and (iii) the amount of any money and the fair market value of any other property (other than stock permitted to be received under § 361(a) without the recognition of gain) received by Sub 9 in connection with Merger 2. The fair market value of the assets of Sub 1 will exceed the amount of its liabilities immediately after Merger 2.

The Contributions

Taxpayer makes the following representations with respect to the Contributions, described above in step (viii):

- (6a) Each of the Contributions will qualify as an exchange under § 351.

RULINGS

Characterization of Proposed Transactions

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the characterization of the Proposed Transactions:

- (1) For U.S. federal income tax purposes, the Proposed Transactions will be treated as if the following transactions occurred in the following order: (a) a statutory merger of Sub 8 with and into Sub 9, with Sub 9 surviving (i.e., Merger 1); (b) a contribution of the assets related to Business A to Sub 9 by Sub 7 in constructive exchange for Sub 9 stock and the assumption by Sub 9 of liabilities associated with Business A (i.e., the Initial Contribution); (c) a distribution of Sub 9 shares by Sub 7 to Sub 6 (i.e., Distribution 1); (d) a distribution of Sub 9 shares by Sub 6 to Sub 2 (i.e., Distribution 2); (e) a distribution of Sub 9 shares by Sub 2 to Parent (i.e., Distribution 3); (f) a statutory merger of Sub 9 with and into Sub 1, with Sub 1 surviving (i.e.,

Merger 2); (g) a transfer of all of the assets of Sub 9 and Sub 8 by Sub 1 to Sub 3 in constructive exchange for Sub 3 stock and the assumption by Sub 3 of all of the liabilities of Sub 9 and Sub 8 (i.e., Contribution 1); (h) a transfer of all of the assets of Sub 9 and Sub 8 by Sub 3 to Sub 4 in constructive exchange for Sub 4 stock and the assumption by Sub 4 of all of the liabilities of Sub 9 and Sub 8 (i.e., Contribution 2); and (i) a transfer of all of the assets of Sub 9 and Sub 8 by Sub 4 to Sub 5 in constructive exchange for Sub 5 stock and the assumption by Sub 5 of all of the liabilities of Sub 9 and Sub 8 (i.e., Contribution 3) (Rev. Rul. 70-224, 1970-1 C.B. 79; Rev. Rul. 64-73, 1964-1 C.B. 142).

Merger 1

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Merger 1:

- (2) For U.S. federal income tax purposes, provided that Merger 1 qualifies as a statutory merger in accordance with applicable state law, the transfer by Sub 8 of all of its assets to Sub 9 in constructive exchange for Sub 9 stock and Sub 9's assumption of Sub 8's liabilities, followed by Sub 8's constructive distribution of Sub 9 stock to Sub 7 in complete dissolution of Sub 8, will qualify as a reorganization under § 368(a)(1)(A). Sub 8 and Sub 9 each will be a "party to a reorganization" within the meaning of § 368(b).
- (3) No gain or loss will be recognized by Sub 8 on the transfer of all of its assets to Sub 9 in exchange constructively for Sub 9 stock and Sub 9's assumption of Sub 8's liabilities in Merger 1 (§§ 357(a) and 361(a)).
- (4) No gain or loss will be recognized by Sub 9 on its receipt of all of Sub 8's assets in exchange constructively for Sub 9 stock and Sub 9's assumption of Sub 8's liabilities in Merger 1 (§ 1032(a)).
- (5) No gain or loss will be recognized by Sub 8 on its constructive distribution of the Sub 9 stock constructively received in Merger 1 (§ 361(c)).
- (6) The basis of each asset received by Sub 9 in Merger 1 will equal the basis of that asset in the hands of Sub 8 immediately before Merger 1 (§ 362(b)).
- (7) The holding period of each asset received by Sub 9 in Merger 1 will include the period during which Sub 8 held such asset (§ 1223(2)).
- (8) No gain or loss will be recognized by Sub 7 on the constructive exchange of its Sub 8 stock for Sub 9 stock in Merger 1 (§ 354(a)(1)).

- (9) The basis of the Sub 9 stock constructively received by Sub 7 will be the same as the basis of the Sub 8 stock surrendered in exchange therefor (§ 358(a)(1)).
- (10) The holding period of the Sub 9 stock constructively received by Sub 7 in Merger 1 will include the holding period of the Sub 8 stock surrendered in exchange therefor, provided that such Sub 8 stock is held as a capital asset on the date of Merger 1 (§ 1223(1)).

Initial Contribution and Distribution 1

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Initial Contribution and Distribution 1:

- (11) The Initial Contribution, followed by Distribution 1, will be a reorganization under § 368(a)(1)(D). Sub 7 and Sub 9 each will be a “party to a reorganization” within the meaning of § 368(b).
- (12) No gain or loss will be recognized by Sub 7 on the Initial Contribution (§§ 357(a) and 361(a)).
- (13) No gain or loss will be recognized by Sub 9 on the Initial Contribution (§ 1032(a)).
- (14) The basis of each asset received by Sub 9 in the Initial Contribution will equal the basis of that asset in the hands of Sub 7 immediately before the Initial Contribution (§ 362(b)).
- (15) The holding period of each asset received by Sub 9 in the Initial Contribution will include the period during which Sub 7 held the asset (§ 1223(2)).
- (16) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Sub 6 as a result of Distribution 1 (§ 355(a)(1)).
- (17) No gain or loss will be recognized by Sub 7 as a result of Distribution 1 (§ 361(c)(1)).
- (18) The aggregate basis of the Sub 7 shares and the Sub 9 shares in the hands of Sub 6 after Distribution 1 will be the same as the basis of the Sub 7 shares in the hands of Sub 6 immediately before Distribution 1 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Sub 7 shares and the Sub 9 shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

- (19) The holding period of the Sub 9 shares received by Sub 6 in Distribution 1 will include the holding period of the Sub 7 shares with respect to which Distribution 1 will be made, provided that such Sub 7 shares are held as capital assets on the date of Distribution 1 (§ 1223(1)).
- (20) As provided in § 312(h), proper allocation of earnings and profits between Sub 7 and Sub 9 will be made under §§ 1.312-10(a) and 1.1502-33(e)(3).

Distribution 2

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Distribution 2:

- (21) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Sub 2 as a result of Distribution 2 (§ 355(a)(1)).
- (22) No gain or loss will be recognized by Sub 6 as a result of Distribution 2 (§ 355(c)).
- (23) The aggregate basis of the Sub 6 shares and the Sub 9 shares in the hands of Sub 2 after Distribution 2 will be the same as the basis of the Sub 6 shares in the hands of Sub 2 immediately before Distribution 2 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Sub 6 shares and the Sub 9 shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
- (24) The holding period of the Sub 9 shares received by Sub 2 in Distribution 2 will include the holding period of the Sub 6 shares with respect to which Distribution 2 will be made, provided that such Sub 6 shares are held as capital assets on the date of Distribution 2 (§ 1223(1)).
- (25) As provided in § 312(h), proper allocation of earnings and profits between Sub 6 and Sub 9 will be made under §§ 1.312-10(b) and 1.1502-33(e)(3).

Distribution 3

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Distribution 3:

- (26) No gain or loss will be recognized by (and no amount otherwise will be included in the income of) Parent as a result of Distribution 3 (§ 355(a)(1)).

- (27) No gain or loss will be recognized by Sub 2 as a result of Distribution 3 (§ 355(c)).
- (28) The aggregate basis of the Sub 2 shares and the Sub 9 shares in the hands of Parent after Distribution 3 will be the same as the basis of the Sub 2 shares in the hands of Parent immediately before Distribution 3 (§ 358(a) and § 1.358-1(a)). Such basis will be allocated between the Sub 2 shares and the Sub 9 shares in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).
- (29) The holding period of the Sub 9 shares received by Parent in Distribution 3 will include the holding period of the Sub 2 shares with respect to which Distribution 3 will be made, provided that such Sub 2 shares are held as capital assets on the date of Distribution 3 (§ 1223(1)).
- (30) As provided in § 312(h), proper allocation of earnings and profits between Sub 2 and Sub 9 will be made under §§ 1.312-10(b) and 1.1502-33(e)(3).

Merger 2

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to Merger 2:

- (31) For U.S. federal income tax purposes, provided that Merger 2 qualifies as a statutory merger in accordance with applicable state law, the transfer by Sub 9 of all of its assets to Sub 1 in constructive exchange for Sub 1 stock and Sub 1's assumption of Sub 9's liabilities, followed by Sub 9's constructive distribution of Sub 1 stock to Parent in complete dissolution of Sub 9, will qualify as a reorganization under § 368(a)(1)(A). Merger 2 will not be disqualified by reason of the Contributions (§ 368(a)(2)(C) and § 1.368-2(k)). Sub 9 and Sub 1 each will be a "party to a reorganization" within the meaning of § 368(b).
- (32) No gain or loss will be recognized by Sub 9 on the transfer of all of its assets to Sub 1 in exchange constructively for Sub 1 stock and Sub 1's assumption of Sub 9's liabilities in Merger 2 (§§ 357(a) and 361(a)).
- (33) No gain or loss will be recognized by Sub 1 on its receipt of all of Sub 9's assets in exchange constructively for Sub 1 stock and Sub 1's assumption of Sub 9's liabilities in Merger 2 (§ 1032(a)).
- (34) No gain or loss will be recognized by Sub 9 on its constructive distribution of the Sub 1 stock constructively received in Merger 2 (§ 361(c)).

- (35) The basis of each asset received by Sub 1 in Merger 2 will equal the basis of that asset in the hands of Sub 9 immediately before Merger 2 (§ 362(b)).
- (36) The holding period of each asset received by Sub 1 in Merger 2 will include the period during which Sub 9 held such asset (§ 1223(2)).
- (37) No gain or loss will be recognized by Parent on the constructive exchange of its Sub 9 stock for Sub 1 stock in Merger 2 (§ 354(a)(1)).
- (38) The basis of the Sub 1 stock constructively received by Parent will be the same as the basis of the Sub 9 stock surrendered in exchange therefor (§ 358(a)(1)).
- (39) The holding period of the Sub 1 stock constructively received by Parent in Merger 2 will include the holding period of the Sub 9 stock surrendered in exchange therefor, provided that such Sub 9 stock is held as a capital asset on the date of Merger 2 (§ 1223(1)).

CAVEATS

No opinion is expressed about the tax treatment of the Proposed Transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distributions satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Distributions are used principally as a device for the distribution of the earnings and profits of a distributing corporation or controlled corporation or both; and
- (iii) Whether the Distributions are part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)

cc: